

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

SHAWN A. PHILLIPS,

Petitioner,

v.

Civil Action No. 5:06CV20  
(STAMP)

AL HAYNES, Warden,

Respondent.

**MEMORANDUM OPINION AND ORDER**  
**AFFIRMING AND ADOPTING REPORT AND**  
**RECOMMENDATION OF MAGISTRATE JUDGE**

I. Procedural History

On January 13, 2006, the petitioner, Shawn A. Phillips ("Phillips"), appearing pro se, filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241. The case was transferred to this Court because the petitioner is an inmate at the Hazelton Penitentiary in Bruceton Mills, West Virginia. The case was then referred to United States Magistrate Judge John S. Kaull, pursuant to Local Rule of Prisoner Litigation Procedure 83.09, to recommend disposition of this matter.

On April 13, 2006, Magistrate Judge Kaull filed a report recommending that Phillips's § 2241 petition be denied and dismissed without prejudice for failure to prosecute.

The magistrate judge informed the parties that if they objected to any portion of this report, they must file written objections within ten days after being served with copies of this report. No objections have been filed.

Pursuant to 28 U.S.C. § 636(b)(1)(C), this Court must conduct a de novo review of any portion of the magistrate judge's recommendation to which objection is made. As to those portions of a recommendation to which no objection is made, a magistrate judge's findings and recommendation will be upheld unless they are "clearly erroneous." Because no objections have been filed, this Court has reviewed the magistrate judge's report and recommendation for clear error, and is of the opinion that it should be affirmed and adopted in its entirety.

As the magistrate judge indicated in his report and recommendation, the record reflects that the petitioner has failed to file a consent to collect fees from trust account or a signed prisoner trust account report with ledger sheets. A notice of deficient pleading was delivered to the plaintiff, but the deficiency was not corrected. As of May 9, 2006, the required forms have yet to be filed. Accordingly, this Court finds the magistrate judge's recommendation to be without clear error.

## II. Conclusion

Because this Court concludes that the magistrate judge's recommendation is without clear error, this Court hereby AFFIRMS and ADOPTS the magistrate judge's report and recommendation in its entirety. Accordingly, the petitioner's § 2241 petition is DENIED WITHOUT PREJUDICE for failure to prosecute and this civil action is

hereby DISMISSED WITHOUT PREJUDICE and STRICKEN from the active docket of this Court.

IT IS SO ORDERED.

The Clerk is DIRECTED to transmit copies of this order to the petitioner and to counsel of record herein. Pursuant to Federal Rule of Civil Procedure 58, the Clerk is DIRECTED to enter judgment on this matter.

DATED: May 9, 2006

/s/ Frederick P. Stamp, Jr.  
FREDERICK P. STAMP, JR.  
UNITED STATES DISTRICT JUDGE